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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/585,589 | 05/23/2007 | Antonio Giuseppe Perra | 3135-062040 | 4463 |

28289 7590 09/30/2009
THE WEBB LAW FIRM, P.C.
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PA 15219

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| EXAMINER |
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ELOSHWAY, NIKI MARINA

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| ART UNIT | PAPER NUMBER |
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3781

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09/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/585,589 | Applicant(s) PERRA, ANTONIO GIUSEPPE | |
| | Examiner NIKI M. ELOSHWAY | Art Unit 3781 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 and 37 is/are allowed.
- 6) ☒ Claim(s) 22-28, 30-36 and 39-42 is/are rejected.
- 7) ☒ Claim(s) 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22-26, 28, 30-32, 36 and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by McHenry et al. (U.S. 6,626,314). McHenry et al. teach a device for sealing food product containers, shown in figures 17-20, comprising a sealing element 22 adapted to engage on a wall 18 of a food product container around a wall opening 20 arranged in the wall. The operating element is element 24 and is adapted to co-act with the sealing element for displacing the sealing element between an opened position, shown in figure 20, leaving the wall opening clear and a closed position, shown in figure 17, sealing the wall opening. The operating element is provided with coupling means which is the radially outer portion of the operating element which fits over and inside the rim of the container, for coupling to the food product container. The relative orientation of the sealing element and the operating element can be changed, as shown in figures 18 and 20. The operating element pulls the sealing element upwardly to the closed position to engage under bias on the wall for substantially medium-tight sealing of the food product container. The operating element is rotated upwardly, out of the plane of the container lid.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (U.S. 6,626,314) in view of Choi et al. (U.S. 2006/0226110). McHenry et al. teach the claimed invention except for the seal on the wall of the food product. Howard et al. teach the use of a seal, however, the seal is located on the sealing element. Choi et al. teach that it is known to provide a container with a seal around the opening (see element figures 26 and 27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of McHenry et al. with the seal being on the container instead of the sealing element, as taught by Choi et al., in order to provide a secure engagement with the sealing element even when there are imperfections in the container wall surrounding the opening.

5. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (U.S. 6,626,314). The embodiment in figures 21-23 of McHenry et al. teach the claimed invention except for the operating element receiving a pin. McHenry et al. teach that the pin projects from the operating element and the pin receiving opening is at lead line 32, in figure 21 and located on an intermediate element. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of McHenry et al. with pin extending from below the lid and the pin receiving opening extending from the operating element, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

6. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (U.S. 6,626,314) in view of Dibdin et al. (U.S. 2005/0115977). McHenry et al. teach the claimed invention except for the opening of the operating element. Dibdin et al. teach that it is known to provide a operating element with openings (see elements 119 and 117). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of McHenry et al. with

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the operating element having openings, as taught by Dibdin et al., in order to better control dispensing and venting.

7. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (U.S. 6,626,314) in view of Dibdin et al. (U.S. 2005/0115977), as applied to claim 33 above, and further in view of Eckstrum (U.S. 2005/0150895). The modified device of McHenry et al. teaches the claimed invention except for the screen. Eckstrum teaches that it is known to provide a container with a screen (see element 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified device of McHenry et al. with a screen, as taught by Eckstrum, in order to prevent debris from entering the container.

Allowable Subject Matter

8. Claims 29 and 37 are allowed.

9. Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's amendments, filed June 10, 2009, have been fully considered and are sufficient to overcome the reference of Howard et al. Therefore, that rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of McHenry et al. (U.S. 6,626,314).

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Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/
Supervisory Patent Examiner, Art Unit 3781

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
Art Unit 3781

nme